Supreme Court, U.S.
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No. 96-1110

In The

Supreme Court of the United States

October Term, 1996

JACQUELINE SCHROERING,

Petitioner,

v.

THE COURIER-JOURNAL AND LOUISVILLE TIMES COMPANY and UNKNOWN DEFENDANTS,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Kentucky

RESPONDENT'S BRIEF IN OPPOSITION

JON L. FLEISCHAKER
Counsel of Record
DEBORAH H. PATTERSON

WYATT, TARRANT & COMBS
Citizens Plaza
Louisville, Kentucky 40202
(502) 589-5235

Counsel for Respondent
The Courier-Journal and
Louisville Times Company

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED FOR REVIEW

Petitioner seeks this Court's review based on the following framed questions:

> Are statements, defamatory per se at common law, that impute inappropriate courtroom behavior and legal incompetence to a sitting judge absolutely privileged under the First Amendment to the Constitution of the United States because purportedly incapable of being proven true or false?
>
> May "Absence of malice" be said to be conclusively established in a media/public figure defamation case where the plaintiff has not been given a fair opportunity to complete her discovery?

PARTIES TO THE PROCEEDING

The parties to this proceeding are as named to the Petition and this Brief in Opposition. At no time below has Petitioner identified the "Unknown Defendants" named in this action. Pursuant to Sup. Ct. R. 29(6), Respondent states that the Courier-Journal and Louisville Times Company is a wholly-owned subsidiary of Gannett Co., Inc.

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RESPONDENT'S BRIEF IN OPPOSITION

Respondent, the Courier-Journal and Louisville Times Company ("the Courier-Journal"), respectfully requests that the Court deny the Petition for Writ of Certiorari seeking review of the April 26, 1996 Opinion Affirming rendered by the Kentucky Court of Appeals.

OPINIONS BELOW

The Opinion Affirming of the Court of Appeals, which was the highest state court to actually review and decide the case, is reprinted at Appendix 2a to the Petition. The Opinion Denying Discretionary Review of this case entered by the Supreme Court of Kentucky is reprinted at Appendix 1a to the Petition.

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(3).

STATEMENT OF THE CASE

Before this high Court today is an action initiated almost three years ago in which the Petitioner, defeated in her bid for reelection to a state district court, sued the newspaper that refused to endorse her. Specifically, she

claims that she was defamed by three endorsement editorials that both identified and explained the newspaper's candidate choices for the 1993 primary and general election.[1]

That this unseated officer of the court has for the last three years employed what she must recognize from experience as the already overextended judicial resources of this community to vent her frustrations over a resounding political defeat is a travesty to say the least. Much more egregious, however, is her effort in the process to trample this newspaper's, and indeed the public's, unequivocal constitutional guarantees of free speech and free press.

Under the First Amendment, newspapers and citizens have the right to criticize elected officials in the performance of their public duties. This right becomes all the more compelling in the context of a political election. Kentucky courts have recognized the need for its citizens to freely discuss the qualifications of those who choose to run for public office:

> [I]t can hardly be doubted that the constitutional guarantee [of free speech] has its fullest and most urgent application precisely to the conduct of campaigns for political office.

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[1] Petitioner attempts to resurrect for this Court a defamation claim relating to an editorial cartoon. Both at oral arguments before the circuit court and in her Reply brief to the Court of Appeals, Ms. Schroering "acquiesced" in the dismissal of any discrete claim based on the cartoon.

Sparks v. Boone, Ky. App., 560 S.W.2d 236, 238 (1977) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).

The First Amendment affords every person the right to voice his or her opinion concerning matters of public concern. Whether these opinions are voiced from an opponent's megaphone atop a town square podium, across the backyard fence or in a local newspaper's editorial section, the protection is the same. This fundamental guarantee ensures that public debate on public issues remains "uninhibited, robust, and wide open" – an indispensable prerequisite to a democratic society. These vital constitutional hallmarks cannot be compromised by a frustrated candidate who happens to disagree with a particular viewpoint voiced by a newspaper in a particular campaign. Certainly, frustration or a difference of opinion is not the type of "compelling" reason necessary to warrant this Court's review.

The Kentucky Court of Appeals was absolutely correct in this defamation action to affirm summary judgment in favor of this newspaper. The Court looked to the editorial endorsements themselves to find they reflected personal opinions concerning Ms. Schroering's performance as judge and as such could not be proven false. The Court also looked to Ms. Schroering's own discovery results to find that the Courier-Journal's published statements about the then-judicial candidate were fully supported by the editorial writer's interview notes and hence could not have been made with "actual malice."

There is absolutely no reason, "compelling" or otherwise, for this highest Court to exercise its discretionary

authority to review this case. To the contrary, the Court has the obligation to put an end to this meritless action once and for all.

> Our courts should resolve free speech litigation more expeditiously whenever possible. The perpetuation of meritless actions, with their attendant costs, chills the exercise of press freedom.

Maressa v. New Jersey Monthly, 445 A.2d 376, 387 (N.J.), *cert. denied*, 459 U.S. 907 (1982). The courts below correctly held that Ms. Schroering has no basis for her defamation claims against this newspaper. Whatever her reasons for pursuing this litigation, they are not supported by the established law or the uncontroverted facts. The First Amendment absolutely protects the Courier-Journal's right to comment as it did, and to relay the opinions of others, concerning this public official's performance of her public duties and likewise to endorse her opponent as the better candidate in the election.

The Court of Appeals decision is consistent with, and expressly relies upon, well-established constitutional law. This Court's judicial resources are preciously reserved for resolutions of conflicting decisions on important federal questions – not second-chance appeals by unsuccessful political candidates.

* * *

Jacqueline Schroering filed her Complaint on May 12, 1994 against the Courier-Journal, alleging that the newspaper "falsely, maliciously and with a knowing or reckless disregard for the truth" published three "articles" and one cartoon that defamed her. In fact, the articles at issue are endorsement editorials, clearly evident from

their face, that, along with the cartoon at issue, were published in the course of a contested judicial race in which Ms. Schroering was the incumbent candidate.[2]

The newspaper immediately filed a Motion to Dismiss on the grounds that the cartoon and editorials were protected expressions of opinion and not defamatory as a matter of law. At a July 26, 1994 hearing on the motion, the Jefferson Circuit Court dismissed Ms. Schroering's claims relating to the cartoon, finding it hyperbole and nonactionable opinion. *See* Appendix 12a to Petition. The Court further indicated, but reserved so ruling, that with the exception of a few statements the remainder of the editorials are also protected assertions of opinion.

The Court stopped short of dismissing the entire lawsuit because of three statements contained in a May 15, 1993 endorsement editorial. The three statements relay opinions of certain judges and lawyers contacted by the Courier-Journal concerning their assessment of Ms. Schroering's performance as district judge:

> . . . Male and female lawyers complain of disturbing displays of emotionalism in her courtroom. . . . And, more critical, complaints persist about her legal acumen and ability to articulate her legal reasoning. Lawyers say they regularly leave her courtroom wondering whether she grasped their argument or the law it was based upon.

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[2] As the Petition fails to provide the Court with copies of the three editorials at issue, Respondent herewith lodges the editorials with the Court as Exhibits A, B and C. The editorial cartoon, which Petitioner admitted below is nonactionable, is reproduced at 8a of the Petition. *See supra* at n.1.

See Respondent's Exhibit A as lodged with the Court. The Court found that a factual question existed as to whether any lawyers and judges in fact expressed the opinions published in the May 15, 1993 editorial and allowed Ms. Schroering to conduct discovery on that issue.

In response to Ms. Schroering's discovery requests, the Courier-Journal produced editorial writer Laurel Shackelford and Opinion Page editor Keith Runyon for deposition testimony and provided Ms. Shackelford's interview notes relating to the editorials at issue.[3] Ms. Shackelford's notes established that the Courier-Journal talked to lawyers and judges concerning their opinions of Ms. Schroering's performance.

Further, Ms. Shackelford's notes established that the May 15, 1993 editorial was a fair and accurate reflection of the gist of the opinions expressed to the Courier-Journal.[4] The notes clearly reflect that male and female lawyers in fact made complaints concerning Ms. Schroering's courtroom demeanor.

> (Source #1) Her mannerisms on the bench . . . it's like she's like a spoiled little girl. She makes faces.

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[3] The Courier-Journal also responded to Interrogatories and a Request for Production of Documents.

[4] Though not a part of the former judge's complaint against this newspaper, the May 15, 1993 editorial's favorable comments about Ms. Schroering (*i.e.*, "takes her work seriously, does it in a timely manner and is considered honest," "regarded as tough on domestic violence") are likewise supported by the interview notes.

(Source #8) JS became angry and started yelling at the atty: Mr. [redacted] you've asked that (question). i'm not going to allow you to intimidate and harass this witness. i remember thinking that wasn't judicious. She could have been more even keeled.

(Source #9) JS temperamentally unsuitable. Practiced before her. Almost an instability. an immaturity. unpredictable. nice person. seen her cry.

(Source #7) [S]he got horrible judicial temperament. . . . She'll fly off. . . . she'll go on tangents.

(Source #10) [S]he lacks the temperament to be a judge. Many people saw her break down and cry. . . . guy came in front of her and she started giving her a lecture, he started talking back, instead of saying you will be quiet – she went off on this female harange; said court is recessed and ran out the back.

(Source #11) [H]er temperament is not very sound.

Likewise, the notes showed that certain judges and lawyers contacted by the Courier-Journal expressed an unfavorable opinion concerning Ms. Schroering's legal ability.

(Source #1) [D]oesn't have a good knowl of the law.

(Source #2) [I] can't truthful[ly] tell you that she's a good judge that she knows the law and how to apply.

(Source #5) I don't think she has the legal skills to make a fair disposition of the cases before her. . . . [D]oesn't have an intimate or even

passable knowledge of the law. . . . If had impt case and wanted a judge who would understand . . . the issues and have strength of character to do the right thing there are a no. of other judges I would choose first.

(Source #7) She has an inability to develop a consensus as to what was the appropriate legal outcome. i will disagree with judges a lot, and that's part of the game. i feel I have done my job and judge their's if I can understand the rationale the court came to. i feel as though there's that understanding that [lawyers] and judges can reach . . . can't make conclu about what she knows about the law.

(Source #8) I won't tell you she's an Einstein; sometimes I'm not sure where she's coming from when she makes rules. . . . Obviously made a gross misstatement of the law when she said police couldn't arrest her brother because they didn't witness the incident.

(Source #7) Bias isn't the problem: she doesn't have a clue. she'll go on tangents; everyone will have a hard time following her; seeing how she reached her conclusions; has a hard time interpreting arguments. . . .

(Source #11) Her legal ability is suspect.

(Source #12) On the bench, she doesn't know the law. . . . inability to view cases critically and analytically . . . can't discuss meaty, heavy critical issues.

On November 29, 1994, the Courier-Journal renewed its motion to dismiss the remaining claims, this time in the form of a Motion for Summary Judgment. As grounds, the newspaper stated that Ms. Schroering's own

discovery established conclusively that there was no factual issue as to whether the Courier-Journal accurately published the opinions expressed by its sources. The Circuit Court agreed and dismissed the remainder of the claims on January 26, 1995. *See* App. 14a to Petition. Ms. Schroering then appealed to the Court of Appeals.

On April 26, 1996, the Court of Appeals in a unanimous opinion affirmed the summary judgment granted by the Circuit Court. *See* Opinion Affirming at App. 2a-7a to Petition. In so doing, the Court of Appeals relied on the ultimate and undisputably established authority on defamation law as set forth by the United States Supreme Court. *See* Opinion Affirming (citing *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974); *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767 (1986); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990); *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496 (1991)).

The Court of Appeals appropriately prefaced its ruling by setting forth the constitutional standard by which all defamation actions brought by public officials must be scrutinized:

> In *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686 (1964), our nation's highest court held that:
>
> > The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice" – that is, with knowledge that it was false or with

> reckless disregard of whether it was false or not.
>
> This rule was recently affirmed in *Masson v. New Yorker Magazine, Inc.*, 501 U.S. 496, 111 S.Ct. 2419, 115 L.Ed.2d 447 (1991), wherein the Supreme Court held that a public figure who seeks to recover damages from a media defendant must specifically demonstrate, by clear and convincing evidence, that the defendant had serious doubts regarding the statement's truth or was highly aware that it was probably false. Moreover, mere negligence or journalistic carelessness in making such a statement does not in and of itself establish the existence of malice. *Masson, id; Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974). *See also* 50 Am.Jur.2d *Libel and Slander* §§ 32, 38 (1995). Further, at least where a media defendant is involved, statements addressing public concerns must be proven to be false before any liability for defamation may attach. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 110 S.Ct. 2695, 111 L.Ed.2d 1 (1990); *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986).

Opinion Affirming, App. 3a-4a to Petition.

Applying the law to the facts in this case (namely, the editorials themselves and the information gleaned by Petitioner through discovery), the Court found two basic flaws in Ms. Schroering's cause against this newspaper. The existence of either alone was more than sufficient to warrant dismissal. First, the Court found that there was no evidence in the record that the editorials concerning Ms. Schroering's performance were published with actual

malice, *i.e.*, with knowledge that they were false or in reckless disregard of the truth. To the contrary, the Court found the published opinions were supported by the editorial writer's interview notes. Second, the Court found the editorial endorsements reflecting the personal opinions of others were not subject to defamation liability because they were not capable of being proven false. Opinion Affirming, App. 6a-7a to Petition. Accordingly, the Court of Appeals held that the Courier-Journal was entitled to judgment as a matter of law and affirmed the Circuit Court's decision granting summary judgment.

Dissatisfied with the Court of Appeals' decision, Petitioner sought discretionary review from the Supreme Court of Kentucky. Adhering to the standard that discretionary review "will be granted only when there are special reasons for it," the highest state court declined to rehear the case. *See* Order Denying Discretionary Review, Petition at App. 1a.

REASONS FOR DENYING THE PETITION

Undaunted by the unequivocal law enunciated by the United States Supreme Court and the consistent rulings of two Kentucky courts that she has no legal cause to complain about commentaries relating to her performance of public duties, former Judge Schroering seeks yet another review of her meritless action.[5] Her attempt

[5] It has been estimated that half of all libel cases are nuisance cases, in which plaintiffs have no plausible hope for ultimate success on the merits but seek satisfaction from the

cannot succeed, however, because she has failed to show any "compelling reasons" that would justify a writ of certiorari here. Sup. Ct. R. 10.

The primary question Ms. Schroering puts forth in an effort to keep her campaign against this newspaper alive is one that was answered by this Court over ten years ago. In *Philadelphia Newspapers v. Hepps*, 475 U.S. 767 (1986), the Supreme Court held that in order for a public official to succeed in a defamation against a media defendant, she must prove that the alleged defamatory statement is false. A statement that cannot be proven true or false is simply not actionable, according to this Court.

Ten years and a virtual progeny of case law later, Petitioner asks, "But, are you sure?" Is this Court sure it wants to encourage public discussion of government and public officials? Is it sure about this country's commitment to "uninhibited, robust, and wide-open" debate on public issues? Is it sure about the protections it has afforded to those "bold enough" to criticize the positions or actions or qualifications of their public officials?

Of course, at the cornerstone of the body of constitutional law that this unsuccessful judicial candidate urges be reconsidered is *New York Times v. Sullivan*, 376 U.S. 254 (1964). Yet, the only mention Ms. Schroering makes of the

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mere process. *See* Seth Godchild, "Media Counteractions: Restoring the Balance to Modern Libel Law," 75 Georgetown L.J. 315, 326 (1986) (quoting at note 72 the dissent in *Herbert v. Lando*, 441 U.S. 153, 204 (1979) in which the late Justice Thurgood Marshall stated that "many self-perceived victims of defamation are animated by something more than a rational calculus of their chances for recovery").

seminal case is in recounting a list of authorities cited by this Respondent. The omission is understandable, as is her refusal to attempt to reconcile her claims with line of decisions from this Court following *New York Times* which reinforce the right of citizens and the media to freely comment upon the conduct and qualifications of their elected officials. The established law leaves no room for argument. It fully and unequivocally supports the fact that this case was properly dismissed by all the Kentucky courts that heard it.

The Circuit Court found, and the Court of Appeals affirmed, that *as a matter of law* Ms. Schroering simply had no cognizable claims. As a matter of law, she has no claim for defamation because the opinions expressed in the endorsement editorials were not provably false and hence not capable of a defamatory meaning.[6] The Court of Appeals also found that "the record contains nothing to suggest in any way either that the statements were made with the knowledge that they were false, or that they were made in reckless disregard of the truth." Opinion Affirming, App. 6a to Petition. This absence of actual malice proof provided a second, independent ground to

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[6] If the publication is not capable of defamatory meaning in the first instance, the court is required to rule that the publication is not a defamation as a matter of law and the suit should be dismissed. This is not merely an aphorism of [state] law, it is part of the first amendment guarantee of free speech which we all enjoy as Americans.

Flip Side Inc. v. Chicago Tribune, 564 N.E.2d 1244, 1254 (Ill. App. 1990) (*citing Greenbelt Co-op Publishing Ass'n v. Bresler*, 398 U.S. 6 (1970); *New York Times v. Sullivan*, 376 U.S. 254 (1964)).

dismiss this case. Petitioner has no basis to cry foul at either of these grounds. Very basically, as Ms. Schroering bears the burden to prove that the statements were false in order to even state cause of action, her claims were properly dismissed when the court determined such proof had not, and could not, be made.

A. The Endorsement Editorials Do Not Contain Provably False Assertions of Fact.

Based on the Supreme Court's analysis in *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), courts have held that the threshold inquiry in any defamation claim based on opinion is whether the statement could be reasonably understood as declaring or implying facts capable of being proved true or false. *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1053 (9th Cir. 1990), *cert. denied*, 499 U.S. 961 (1991); *Phantom Touring Inc. v. Affiliated Publications*, 953 F.2d 724, 730 (1st Cir.), *cert. denied*, 504 U.S. 974 (1992); *Dworkin v. L.F.P., Inc.*, 839 P.2d 903 (Wyo. 1992). Factual verifiability is the key. Without it, there is no defamation.

> [T]he expression of opinion on matters with respect to which reasonable men might entertain differing opinions is not libelous. An assertion that cannot be proved false cannot be held libelous. *A writer cannot be sued for simply expressing the opinion of another person*, however unreasonable the opinion or vituperous the expressing of it may be. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.

Collins v. Cox Enterprises, 452 S.E.2d 226, 227 (Ga. App. 1994) (emphasis added.) (quoting *Kendrick v. Jaeger*, 436 S.E.2d 92 (Ga. App. 1993)).

The Court of Appeals for the District of Columbia explained the analysis in a recent case in which, after a reconsideration of its own previous decision on the issue, the Court held that criticisms of a journalist's "sloppy journalism" and unprofessional techniques were not actionable under *Milkovich*. *Moldea v. New York Times Co.*, 22 F.3d 310, 316 (D.D.C. 1994). "Reasonable minds can and do differ as to how to interpret a literary work." *Id.* Likewise, reasonable minds can and do differ as to how to rate the performance of an elected judge.

The law fully supports the Court of Appeals' holding that the Courier-Journal's published statements assessing Ms. Schroering's tenure as district judge are incapable of being proven false and are therefore nonactionable. In the courts below, the former judge states that the opinions are subject to verification. Her tendered proof defeated her own argument.

To prove that these alleged assertions of fact relating to her judicial performance are false, Ms. Schroering, quite tellingly, submitted an affidavit containing ***her opinion*** on the issue. *See* Affidavit of Jacqueline Schroering, App. 9a-11a to Petition. As to her judicial temperament, the former judge states, "***I do not believe*** that I was given to "disturbing displays of emotionalism, while I sat as a District Judge between 1986 and 1994; . . . " She asserts a similar favorable opinion of her legal acumen: "***I believe*** that I know the criminal law of Kentucky as well

as any District Judge or attorney who regularly practices in that area."[7]

Ms. Schroering's Affidavit exemplifies the very reason why these endorsement editorials are constitutionally protected and why this lawsuit was properly dismissed. Ms. Schroering, for example, does not think she exhibited any disturbing displays of emotionalism for a sitting judge. The Courier-Journal has sources who think she did. Ms. Schroering thinks she has a fine grasp of the law. The Courier-Journal talked to lawyers and judges who hold a different view. Which is correct? There is no provable answer. Clearly, these published opinions concerning Ms. Schroering's judicial performance are no more provably true or false than is the differing opinion voiced by the former judge herself. All are subjective. Accordingly, as a matter of law, none are defamatory.

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[7] Ms. Schroering also states the published opinions concerning her legal acumen and disturbing emotionalism can be proved false by listening to audiotapes of her courtroom proceedings, and reading the record of her cases. Presumably, after sitting through eight years worth of district court cases, a judge or jury would then give **their opinion** as to whether Ms. Schroering displayed any emotionalism, and whether such emotionalism was disturbing and whether she seemed, **in their opinion**, to grasp legal issues, and then perhaps, whether they agreed with **the opinions** reported in the newspaper. Under Ms. Schroering's scheme, if the opinion of the judge or jury differs from that expressed in the endorsement editorial, then the newspaper would be held liable under the laws of defamation in this state for printing a false assertion of fact. The fallacy of this position is manifest. The Court of Appeals was correct to disregard it.

Indeed, the *only* provable aspect of this case was uncontested: The Courier-Journal had sources who complained about Ms. Schroering and it accurately reported the gist of those complaints. Given the quite generous opportunity to review the contemporaneous notes of the newspaper's interviews with its sources and to listen to deposition testimony from those responsible for the editorials, Ms. Schroering did not below, nor does not now, dispute this, the only genuine issue of material fact in this case. The Courier-Journal was clearly entitled to summary judgment.

Further, Ms. Schroering wanders far astray of *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), and other defamation authorities when she states that the newspaper failed to disclose the underlying facts upon which it based its opinion of her. Ms. Schroering seems to suggest that the newspaper is also required to print the factual basis upon which the Courier-Journal's sources rely for *their* opinions. Under this reasoning, the publication of any public opinion poll would be subject to defamation claims unless it included in its results the factual basis on which every participant relied in forming their opinions on a particular issue. That is not the law. We all have a constitutionally protected right to voice our opinions about an elected public official's performance of his job. We have an absolute right to say "X is not doing a good job" without supplying a factual basis for that assertion. To suggest otherwise strikes at the heart of our democratic system of government and is directly contrary to established law.

The opinions expressed by the Courier-Journal and its sources concerning Petitioner's suitability for public

office are not provable assertions of fact, as they must be under *Milkovich* to survive summary judgment. Indeed,

> [u]nlike bacteria, judges cannot be placed in Petri dishes and examined under a microscope. Virtually every assessment of judicial performance – short of a purely numerical comparison of verdicts or sentences or of affirmance and reversal rates – must rely on the ***subjective*** opinions of observers.

Aisenson v. American Broadcasting Co., 220 Cal. App.3d 146, 385-86 (1990) (emphasis in original) (dismissing defamation claim because there was no evidence that media defendant aired *false* statements of fact by not reporting truthfully and accurately the results of a bar poll reflecting the opinions of lawyers on the performance of local judges). Indeed,

> [i]t may be that [Schroering] was in reality a good judge; but if so, [she] was nonetheless perceived by those who rated [her] to be otherwise. The raters had a right to their subjective views, and the [Courier-Journal] had the right to publish those collective impressions.

Wheeler v. Nebraska State Bar Ass'n, 508 N.W.2d 917, 924 (Neb. 1993) (holding that "[a] representation that a candidate is able and has proper character and temperament is simply a subjective expression of opinion"). To accept Ms. Schroering's position to the contrary would be to virtually silence all political commentary. The Court of Appeals correctly affirmed summary judgment.

B. Plaintiff Did Not, and Could Not, Present Any Genuine Issue of Material Fact as to "Actual Malice."

The Court of Appeals also found that there was no genuine issue in this case as to actual malice. Certainly, if the editorial statements were not capable of being either true or false then it would be absolutely impossible for Ms. Schroering to prove that the newspaper knew the statements were false before they were published. Further, the interview notes of the editorial writer provide undisputed proof that the Courier-Journal accurately reflected the opinions expressed by lawyers and judges to its reporter about Ms. Schroering's performance as district judge.

Ms. Schroering tells this Court she was denied the opportunity to conduct full discovery on the issue of actual malice. As stated, the Court of Appeals did not even need to reach the question of actual malice, the claims being nonactionable because the statements were not provably true or false. Nonetheless, Ms. Schroering submits she is entitled to more time for discovery and likewise more time to further harass this newspaper and add to its already large legal expenses. Whether her ultimate goal is retribution for a lost election or attaining

the names of colleagues who spoke against her,[8] a simple desire to continue discovery on a meritless case is certainly not the type of "compelling reason" that would warrant this Supreme Court's intervention.

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[8] Prior to the filing of this suit, the Courier-Journal's counsel received a letter from Ms. Schroering's counsel, which is a part of the record reviewed by the Court of Appeals. As the following excerpt from the letter suggests, Ms. Schroering's objective in bringing this defamation action was to ascertain the identities of those lawyers quoted in the editorials as complaining about her competency.

> I would appreciate any information you could provide to me in this regard. Obviously, the names of the "complaining lawyers," (both male and female, as to the displays of emotionalism charge) would most adequately address Ms. Schroering's concerns. Indeed, I have advised Judge Schroering that she would be entirely justified in filing an action against your client based upon a pre-litigation refusal to identify these lawyers, and that your client's refusal to identify them during litigation might well result in summary judgment for her upon the issue of liability.

CONCLUSION

Respondent Courier-Journal and Louisville Times Company respectfully requests that the Petition be denied.

Respectfully submitted,

JON L. FLEISCHAKER
Counsel of Record
DEBORAH H. PATTERSON

WYATT, TARRANT & COMBS
Citizens Plaza
Louisville, Kentucky 40202
(502) 589-5235

Counsel for Respondent
The Courier-Journal and
Louisville Times Company